IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.9.2006

CORAM:

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
and
THE HON'BLE MR.JUSTICE M.THANIKACHALAM

W.P.No.27620 of 2003
&
H.C.P.No.932 of 2006

W.P.No.27620 of 2003:

R.Chandra Prakash Gajurel
... Petitioner

vs.

1.TheUnion of India, Ministry of Home Affairs,
rep. By its Secretary to Govt.,
Home Dept., New Delhi.

2.The State of Tamil Nadu,
rep. By its Secretary to Govt.,
Home Department,
Chennai-09.

3. The Inspector of Police,
Airport Police Station,
Meenambakkam, Chennai-27.
.. Respondents.

H.C.P.No.932 of 2006:

Sengodi ... Petitioner

vs.

1.TheUnion of India, Ministry of Home Affairs,
rep. By its Secretary to Govt.,
Home Dept., New Delhi.

2.The State of Tamil Nadu,
rep. By its Secretary to Govt.,
Home Dept., Fort St. George,
Chennai-09.

3.The Inspector of Police,
Bakthi Nagar Police Station,
New Jalpaikuri P.S.,
West Bengal State.
... Respondents

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

W.P. Filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

H.C.P. Filed under Article 226 of the Constitution of India for the issue of a writ of Habeas Corpus as stated therein.

W.P.No.27620 of 2003:

For petitioner :Mr.A.Raghul
For respondents :Mr.P.Wilson...Assistant Solicitor General...for R1
Mr.N.R.Elango, APP for R2 & R3

H.C.P.No.932 of 2006:

For petitioner :: Mr.R.Sankarasubbu
For respondents: Mr.N.R.Elango, APP for R2.
Mr.P.Wilson, Assistant Solicitor General.. for R1
No appearance for R3

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

W.P.No.27620 of 2003 is preferred for the issue a writ of Mandamus forbearing the respondents from in any manner deporting the writ petitioner, R.Chandra Prakash Gajurel, without following the procedure prescribed under the Extradition Act, 1962 and until the case registered against the petitioner in Crime No.145 of 2003 on the file of third respondent therein is tried before the Judicial Magistrate-cum-District Munsif, Alandur.

2. H.C.P.No.932 of 2006 is filed to issue a writ of Habeas Corpus directing the respondents to produce the detenu, Chandra Prakash Gajurel, son of Nageswar Gajurel before the Court and set him at liberty.

3. Since the writ petitioner in W.P.No.27620 of 2003 and the detenu in H.C.P.No.932 of 2006 are one and the same, viz., Mr.R.Chandra Prakash Gajurel and the contentions in the writ petition and the habeas corpus petition are with regard to the right of the writ petitioner/detenu conferred under Article 21 of the Constitution of India, both the matters are taken up for joint hearing.

4. The admitted facts of the case of the writ petitioner are that he was detained by the Senior Immigration Officer, Chennai Airport on the intervening night of 19.8.2003 on the ground that he attempted to travel out of India to London with a forged passport. Thereafter, he was handed over to the third respondent in the writ petition on 21.8.2003, who registered a case against the writ petitioner for the offences punishable under Sections 468 and 471 IPC read with Section 12(1)(b)(d) and (e) of the Indian Passport

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Act. The said case was concededly tried in C.C.No.736 of 2004 on the file of the learned Judicial Magistrate, Alandur and the writ petitioner was convicted by order dated 12.6.2006 for the above-said offences, and sentenced to undergo three years rigorous imprisonment. The writ petitioner was however released on 13.6.2006, after giving set off, the period of remand.

5. In the meanwhile, based on a representation made by the writ petitioner to the Registrar, High Court, Madras through the Superintendent of Prisons, Central Prison, Chennai, stating that he came to know that Prisoner on Transit Warrant, claimed as P.T. Warrant, was issued by the Sub Divisional Judicial Magistrate, Jalpaiguri, Darjeeling District, West Bengal and apprehending that in execution of the said warrant he might be sent to West Bengal, the Division Bench of this Court by order dated 27.8.2004 made in W.P.No.27620 of 2003 held as follows:

> "..... 3.. On going through the representation of the petitioner dated 11.8.2004 and in the light of the apprehension expressed therein, there shall be an order of stay of execution of P.T. Warrant issued by the Sub Divisional Judicial Magistrate, Jalpaiguri, Darjeeling District, West Bengal in Cr.No.753 of 2004 (FIR No.62 of 2004)."

6. The writ petitioner/detenu was also detained under the provisions of the National Security Act on 19.9.2005 for a period of one year and he was released on 18.9.2006.

7. When the petitioner was released on 18.9.2006 from the Central Prison, Chennai, he was rearrested based on the arrest warrant issued by the Chief Judicial Magistrate, Jalpaiguri and thereafter, produced before the Chief Metropolitan Magistrate, Chennai for issue of transit warrant.

8. On 18.9.2006, when the writ petitioner/detenu was produced before the Chief Metropolitan Magistrate, Chennai, objections were made not to issue transit warrant on the grounds that:

i. arrest warrant has no counter signature of the Commissioner of Police, Chennai and the procedure contemplated under Sections 78 to 81 of the Code of Criminal Procedure are violated; and

ii. arrest memo has no signatures of arrestee and witnesses; the details of arrest not disclosed to the arrestee; the detenu not allowed to contact family members and lawyers and therefore, the directions of the Apex Court in D.K.Basu case were not followed.

9.1. On the same day, viz., 18.9.2006, a Habeas Corpus Petition in H.C.P.No.932 of 2006 was also moved before this Court seeking issue of a writ of Habeas Corpus directing the respondents to produce the detenu, Chandra Prakash Gajurel, son of Nageswar Gajurel before the Court and set him at liberty.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9.2. The Division Bench of this Court, by order dated 19.9.2006, after narrating the facts relating to both writ petition and Habeas Corpus petition referred to above, gave liberty to the petitioner to make appropriate application to the Chief Metropolitan Magistrate, Madras and permitted the learned Public Prosecutor to raise objections if any before the Chief Metropolitan Magistrate, Chennai.

9.3. Accordingly, the writ petitioner/detenu moved an application in Crl.M.P.No.3094 of 2006 under section 437 Cr.P.C. to release the writ petitioner as he is not confined in any crime number. But the said application was objected to by the State on the ground that the petitioner was arrested under a warrant duly issued by the Chief Judicial Magistrate, Jalpaiguri with reference to Crime No.182 of 2004 on the file of the Bakthinagar Police Station for the offences under Section 121, 121(A), 122, 123 and 124(A) IPC, but not on P.T. Warrant.

10.1. As there was a dispute as to the very existence of P.T. Warrant, we sent for the relevant records from the Chief Metropolitan Magistrate, Chennai. After perusal of the said records, we find that the third respondent in H.C.P., viz., the Inspector of Police, Bakthi Nagar Police Station, new Jalpaiguri Police Station, West Bengal State by his representation dated 18.9.2006 made before the Chief Metropolitan Magistrate, Chennai has stated that the Chief Judicial Magistrate, Jalpaiguri issued warrant of arrest on 16.9.2006 to arrest the writ petitioner/detenu from Chennai and on 18.9.2006, the writ petitioner/detenu was arrested near Central Prison, Chennai and that since Jalpaiguri is located at north of West Bengal at a distance of about 2300 k.m., approximately, the third respondent in the H.C.P. prayed for the issue of transit warrant.

10.2. On the said representation, the learned Chief Metropolitan Magistrate, Chennai by order dated 18.9.2006, taking note of the pendency of the writ petition, ordered to detain the writ petitioner/detenu in the Central Prison, Chennai and to produce him on 19.9.2006.

10.3. On 19.9.2006, the Chief Metropolitan Magistrate, Chennai in Crl.M.P.No.3080 of 2006 held that the writ petitioner/detenu should not be taken to West Bengal on a transit warrant till a final decision has been taken in H.C.P. and adjourned the matter to 25.9.2006.

10.4. But, in the meantime, as the petitioner moved H.C.P. this Court, by order dated 19.9.2006, gave liberty to the petitioner to move an application before the learned Chief Metropolitan Magistrate, Chennai.

10.5. Accordingly, the petitioner moved the Chief Metropolitan Magistrate, Chennai in Crl.M.P.3094 of 2006 who, by order dated 21.9.2006, dismissed the said application. The relevant portion of the order dated 21.9.2006 reads as follows:

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

"The petitioner is permitted to make proper application, if the same is permissible. Now, at present, this petition is filed not to extend the confinement and to release the petitioner on bail. As far as the bail is concerned, in the counter filed in H.C.P.No.932/2006, it is stated that a criminal case is pending against the petitioner u/s.141, 121(A), 122, 123, 124(A) IPC in Bakthinagar Police Station in Cr.No.182/2004 and charge sheet has been filed on 19.8.2004 showing the petitioner name and others as absconding with a prayer to issue warrant of arrest. Inasmuch as the Inspector of Police placed warrant of arrest duly issued by the Chief Judicial Magistrate, Jalpaiguri, and since Jalpaiguri is approximately 2300 Kms. away from Chennai, he needed Transit Warrant from this Court. The offences mentioned in the above Crime No. are very serious and grave in nature and these offences, i.e. U/s.121, 121(A), 122, 123, 124(A) IPC are exclusively triable by Sessions Court and this Court has no jurisdiction to release the petitioner on bail. This Court do not see any other ground, other than the grounds mentioned in HCP.No.932/2006, which is pending before the Hon'ble High Court, to release the petitioner on bail or discharge the petitioner from detention."

10.6. On 25.9.2006, the Chief Metropolitan Magistrate, Chennai directed the Central Prison, Chennai to produce the writ petitioner/detenu on 4.10.2006.

11. The core contention of Mr.R.Sankarasubbu is that the detention of the writ petitioner/detenu in the Central Prison is violative of Article 21 of the Constitution of India and he cannot be extradited without following the procedure prescribed under the Extradition Act, 1962. Incidentally it is also contended that the directions of the Apex Court in D.K.Basu's case were not duly complied with at the time of arrest by the third respondent Police on 18.9.2006. In any event, the third respondent in H.C.P.No.932 of 2006 ought not to have arrested the writ petitioner/detenu on 18.9.2006 when the order of stay dated 27.4.2003 was in force.

12.1. Mr.Wilson, learned Assistant Solicitor General submitted that there is no request for extradition and therefore, the question of extraditing the petitioner to Nepal does not arise.

12.2. Mr.N.R.Elango, Additional Public Prosecutor submitted that the petitioner was convicted and sentenced in C.C.No.736 of 2004 and petitioner also underwent the sentence imposed on him.

13. We have given our careful considerations to the submissions of all sides.

14. In view of the specific stand taken by the Union of India that there is no request for extradition under section 4 of the Extradition Act, 1962 and the criminal case in C.C.No.736 of 2004

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

has also ended in conviction and the sentence imposed thereunder was also undergone, we do not see any merit to issue a writ of Mandamus as prayed for and therefore, the writ petition is dismissed as devoid of merits and for want of legal contentions, but with an observation that if and when any request is made for extradition, it goes without saying that the first respondent shall adhere to the procedure under the Extradition Act, 1962 and pass appropriate orders.

15. With regard to HCP, it is settled law that when a warrant is pending against a person, it may not be proper for this Court to entertain a writ of habeas corpus. In the instant case, the writ petitioner/detenu was arrested pursuant to a warrant issued by a competent Court, namely, the Chief Judicial Magistrate, Jalpaiguri and therefore it is not open for the writ petitioner/detenu to challenge such detention under Article 226 of the Constitution of India.

16. The question of granting habeas corpus would arise only in the case of illegal detention or confinement where a detenu is entitled to set at free for want of legal jurisdiction for such detention or in confinement, or the detention appears to be in violation of procedure established by law, of course, such illegality includes the illegality relating to arrest also.

17. Under the factual scenario, it is clear that the petitioner was arrested on 18.9.2006 by the 3rd respondent in H.C.P under a valid warrant issued by the competent jurisdictional Court, viz., Chief Judicial Magistrate, Jalpaiguri and produced before the Chief Metropolitan Magistrate, Chennai who had detained him by a valid judicial order. Under such circumstances, if the petitioner has got any grievance as to the correctness of the arrest for non-compliance of the directions of the Apex Court in D.K.Basu's case, he is at liberty to move the competent jurisdictional Court against the 3rd respondent in H.C.P. to seek necessary relief, if he is so advised.

18. Again, on the request made by Mr.R.Sankarasubbu, learned counsel for the petitioner seeking four weeks time to approach the competent jurisdictional court for the recall of the warrant, we can only observe that the petitioner is at liberty to move the competent jurisdictional court to seek appropriate relief in that regard.

19. However, as a serious apprehension was projected before us as to the danger to the life and person of the detenu till he is produced before the Chief Judicial Magistrate, Jalpaiguri, in the interest of justice and in order to uphold the personal liberty enshrined under Article 21 of the Constitution of India, we direct the Tamil Nadu Government to depute a Police Officer, not below the rank of Deputy Superintendent of Police to accompany the detenu till he is produced before the Chief Judicial Magistrae, Jalpaiguri, if the request of the third respondent in H.C.P. for

https://hcservices.ecourts.gov.in/hcservices/

the issue of Transit Warrant is granted, as this Court cannot be a silent spectator on such reasonable apprehension. We are inclined to issue the above direction to the State of Tamil Nadu as the third respondent in H.C.P. had not chosen to appear before us.

20. Since we are convinced that it may not be proper for us either to issue a writ as prayed for in H.C.P. or to recall the warrant issued by the competent Court by the exercise of power under Article 226 of the Constitution of India, which could be done only by a competent jurisdictional Court, without expressing any opinion in the matter, we give liberty to petitioner to make such request before the Court concerned, which has got jurisdiction over the third respondent in the H.C.P., who arrested the writ petitioner/detenu on 18.9.2006 and seeks a Transit Warrant, as the third respondent in the H.C.P. had not chosen to appear before us.

21. Before concluding, with respect to the left out contention, namely, the third respondent in H.C.P. ought not to have arrested the writ petitioner/detenu on 18.9.2006 when an order of stay granted by the Division Bench of this Court on 27.8.2004 staying the P.T.warrrant was in force, as it is brought to our notice by the leaned Additional Public Prosecutor that the detenu was arrested not pursuant to the P.T. Warrant, but was arrested based on the warrant issued by the competent jurisdictional Court in some other case, the same stands rejected.

In the result,

(i) the writ petition is dismissed as devoid of merits with the above observations.

(ii) The habeas corpus petition is closed with the above observations.

(iii) There is no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Sasi/na

To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai.

2. The Chief Judicial Magistrate, Jalpaiguri
West Bengal.

3. The Sub Divisional Judicial Magistrate,
Jalpaiguri, Darjeeling District, West Bengal.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4. The Judicial Magistrate,
Alandur.

5. Do Thro The Chief Judicial Magistrate,
Chengalpattu.

6. The Superintendent,
Central Prison,
Chennai.

7. The Secretary to Government,
The Union of India, Ministry of Home Affairs,
Home Dept., New Delhi.

8.The Secretary to Government,
State of Tamil Nadu,
Home Department,
Chennai-09.

9. The Inspector of Police,
Airport Police Station,
Meenambakkam, Chennai-27.

10.The Inspector of Police,
Bakthi Nagar Police Station,
New Jalpaikuri P.S.,
West Bengal State.

11. The Public Prosecutor,
High Court, Madras.

2 ccs to Mr.P.Wilson, Assistant Solicitor General of India,
SR. 45951, 45954

W.P.No.27620 of 2003
&
H.C.P.No.932 of 2006

JRG (CO)
kk 28/9

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/